deemed waived, and the statutory amount cannot be taken out of the proceeds of the sale. REMINGTON, §§ 491, 1052, 1056 and citations; BRANDENBURG, p. 130 and citations; COLLIER, Ed. 8, p. 144 and citations; LOVELAND, Ed. 3, 525 and citations; *In re Mathews,* 20 A. B. R. 369; *In re Groves,* 6 A. B. R. 730; *In re McClintock,* 13 A. B. R. 606; *In re Hoyt,* 119 Fed. 987, 9 A. B. R. 574; *In re Wunder,* 133 Fed. 821 (Pa.).

BANKRUPTCY—TITLE TO PROPERTY OF BANKRUPT AFTER ADJUDICATION AND BEFORE ELECTION OF TRUSTEE.—Execution was levied on personalty of X, who filed a claim of exemption with the sheriff, and later in the same day included the same personalty in a schedule of his property in a voluntary proceeding in bankruptcy begun by him. The property was later sold on execution sale. After his adjudication in bankruptcy, and before the election of a trustee, X began suit against the execution creditor and the sheriff for trespass, for the wrongful seizure and sale of property claimed exempt, to which the defendants pleaded that the pendency of the bankruptcy proceedings had so divested X of title as to all goods included in his schedules, that he could not maintain an action for damages for the unawful sale thereof. *Held,* that though by § 70 (a) of the Bankruptcy Act the title to the bankrupt's property vests in the trustee by operation of law as of the date of adjudication, yet from the date of adjudication until the election of the trustee, the bankrupt himself is still the owner-in-trust, and has title, defeasible, but sufficient to authorize the commencement and maintenance of a suit. The trustee after election may begin a new action in his own name, or may intervene and avail himself of the rights and priorities acquired by the bankrupt; but if the trustee neither sues nor intervenes, there is no reason why the bankrupt should not himself continue the litigation. *Johnson* v. *Collier* (1911), 32 Sup. Ct. 104.

The Bankruptcy Act, while it provides that the date of the trustee's title becoming effective, after his appointment and qualification, is to be the date of adjudication, (§ 70) is absolutely silent as to where the title to the property is to rest between the date of adjudication and the appointment and qualification of the trustee, and there is but little authority on this question. It is said that "the correct view of the matter is that the condition of a bankrupt's property after adjudication and before appointment of a trustee is analogous to the condition of the personal property of a decedent before appointment of an administrator. Bankruptcy, like death, divests the owner of title. It becomes thereupon *in custodia legis.*" *In re Frazin & Oppenheim,* 174 Fed. 713; see also *Keegan* v. *King,* 96 Fed. 758; *Abernathy* v. *Phillips,* 82 Va. 769. But in a late case the contrary is asserted. *Plaut* v. *Gorham Mfg. Co.,* 174 Fed. 852. The analogy, however, is not exact, and was not even considered in the principal case. Direct authority for the proposition that "in the interval between the adjudication in bankruptcy and the appointment of the trustee, the title to the property remains in the bankrupt," is to be found in *Gordon* v. *Mechanics etc. Ins. Co.,* 120 La. 441; 45 South. 384; also 15 L. R. A. (N.S.) 827. And remaining in him is such a title as to support an insurable interest in the bankrupt during that time. *Fuller* v. *Ins. Co.,* 184 Mass. 12, 67 N. E. 880; *Fuller* v. *Jameson,* 90 N. Y. Supp. 459; Affirmed 184 N. Y. 605; *Keeney* v. *Home Ins. Co.,* 71 N. Y. 396. But on the other hand it is said that the

property itself, immediately upon adjudication, is under the control and in the custody of the Bankruptcy Court, and is then *in custodia legis*. *Keegan* v. *King*, 96 Fed. 760; *In re Walsh*, 159 Fed. 560; *McNulty* v. *Feingold*, 129 Fed. 1001. Therefore, "title remaining in the bankrupt is inconsistent with control of the estate"; and "title passes conditionally to the court for the benefit of creditors until a trustee is appointed or the estate is closed." *Rand* v. *Sage*, 94 Minn. 344, 102 N. W. 866; *Rand* v. *Iowa Cent. Ry.*, 89 N. Y. Supp. 212. Overruled in *Rand* v. *Iowa Cent. Ry. Co.*, 186 N. Y. 58. The texts, however, bear out the theory that "title to the property itself, whatever it may be, remains in the bankrupt until a trustee is appointed." LOVELAND, Ed. 3, § 149; REMINGTON, § 1120; COLLIER, Ed. 8, 808. And with this theory as a basis it is said that sufficient title remains in the bankrupt for him to commence and to prosecute an action in his own name during this time. *Rand* v. *Iowa Central Ry. Co. supra*. But the fact that even though an action has been so commenced, the bankrupt can maintain it after the appointment of the trustee, is denied in *Remmers* v. *Remmers*, 217 Mo. 541, 117 S. W. 1117, and by dictum in *Pickens* v. *Dent*, 106 Fed. 656. Affirmed 187 U. S. 177 (*Pickens* v. *Roy*). The Bankruptcy Act itself provides for the commencement or continuation of suit by the trustee, § 11, b., c., and § 70a. (6). But if the trustee did not see fit to intervene for any reason under the Act of 1867, the bankrupt might continue the action in his own name. *Thatcher* v. *Rockwell*, 105 U. S. 467 and texts cited. And no provision in the present Act seems to require a different rule. *Hubbard* v. *Gould*, 74 N. H. 25, 64 Atl. 668. The principal case should put an end to these conflicting views, and establish an equitable and legally sound doctrine.

BILLS AND NOTES—AGREEMENT FOR ATTORNEY FEE VOID UNDER NEGOTIABLE INSTRUMENTS ACT.—An agreement, contained in a promissory note, to pay an attorney fee in case of default in payment of the note, was held to be void as contrary to public policy in *Miller* v. *Kyle* (Ohio 1911), 97 N. E. 372. See NOTE AND COMMENT, p. 485 *ante*.

CHAMPERTY AND MAINTENANCE—CONTRACT WITH ATTORNEY FOR CONTINGENT FEE.—Passengers on a vessel were required by the master to discharge the cargo. They assigned their claim for services to an attorney who sued the owner of the vessel, the latter claiming the assignment illegal because champertous. The contract between the plaintiff and the assignors recited that the latter had employed the former and his partner as their attorneys to collect wages due from the defendant, and that they agreed to pay them 25 per cent. of any amount received by them, either by compromise or trial in the Commissioner's Court, and that, if the cause was appealed to the district court, they were to pay 50 per cent. of all amounts recovered. There was no provision in regard to payment of costs, although plaintiff testified that he paid the costs of starting the suit merely as an advancement. *Held*, the contract of assignment was not champertous. *Northwestern Development Co.* v. *Cochran* (1911), 191 Fed. 146.

Act June 6, 1900, C. 786, § 367, 31 Stat. 552, providing for the civil government of Alaska, declares that there shall be in force in that district "so much